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To:

Cc:

Subject: 2009-2399-1, Spanish Translation of US Treasury

This responds to your request for statutory authority for the processes in the IRM related to over-stamping taxpayer checks drawn to a payee other than "United States Treasury."

If a taxpayer makes out a check to something other than "United States Treasury," "US Treasury," "Department of Treasury," or "Internal Revenue Service," the IRM provides that the Service processor may over-stamp the payee line with "United States Treasury" when the processor believes that the taxpayer intended the check to be a payment of federal taxes. See IRM 21.1.7.9.1 and 3.8.44.4.2.

IRC section 6311 provides for the payment of tax by commercially acceptable means. Section 6311(d)(1) provides that the Secretary shall prescribe such regulations as the Secretary deems necessary to receive payment by commercially acceptable means.

Treasury regulation 301.6311-1(a)(1)(i) allows for payment of taxes by check, and specifies that a check or money order in payment for taxes should be made payable to the United States Treasury. There is no statutory requirement for the use of this payee (only a note to the Regulations in section 3703 of P.L. 105-206, which provides that the Secretary shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order made payable to the United States Treasury). It appears that "United States Treasury" was chosen based on administrative convenience and taxpayer protection, as it is unlike an acronym that can be easily altered by a third party.

UCC Article 3, section 3-110 explains the function of the payee on a negotiable instrument. Section 3-110(a) provides: "The person to whom an [instrument](#) is initially payable is determined by the intent of the person...signing as...the [issuer](#) of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person."

UCC section 3-204(d) provides that "if an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder's name or both."

Therefore, Article 3 provides for the validity of a check drawn to the wrong payee name, so long as the drawer intended the check to be paid to that individual or entity. Here, where the Service employee receives a check that he believes was intended for the payment of federal taxes (see circumstances in the IRM that demonstrate taxpayer intent, i.e. mailing to the federal government, attaching to a tax return, drawing the check in the same amount as the liability indicated on the return...), he may stamp the appropriate payee name on the check. There is no requirement in the IRC that the check be drawn to the United States Treasury; the regulations only so provide as a function of administrative convenience and security to the taxpayer. Therefore, the IRM processes related to over-stamping are legally appropriate.

Please let me know if you have any questions and whether this satisfies your request.